

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, :
:
v. : 10-CR-0531 (BMC)
:
PABLO VARGAS, : April 26, 2013
:
Defendant. : Brooklyn, New York
:
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TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE JAMES ORENSTEIN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: UNITED STATES ATTORNEY
BY: NATHAN RILEY, ESQ.
JUSTIN LERER, ESQ.
DOUGLAS PRAVDA, ESQ.
ASSISTANT U.S. ATTORNEYS

For the Defendant: SANDFORD TALKIN, ESQ.
Talkin, Muccigrosso & Roberts LLP
40 Exchange Place, 18th Floor
New York, NY 10005

Spanish Interpreter: MARISTELA VERASTEGUI

Court Transcriber: MARY GRECO
TypeWrite Word Processing Service
211 N. Milton Road
Saratoga Springs, NY 12866

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I N D E X

Defendant Sworn at Page 4

EXHIBITS

Marked Received

1 Plea Agreement

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1 THE CLERK: Criminal Cause For a Pleading, USA v.
2 Pablo Vargas, docket number 10-CR-531. Counsel, please state
3 your appearances for the record starting with the Government.

4 MR. RILEY: God afternoon, Your Honor. Nathan Riley
5 for the United States. With me at counsel table are Justin
6 Lerer and Douglas Pravda.

7 THE COURT: Good afternoon, all.

8 MR. TALKIN: Good afternoon, Your Honor. San Talkin
9 for Mr. Vargas [indiscernible] Mr. Vargas who's seated
10 [indiscernible].

11 THE COURT: Good afternoon. Mr. Vargas, with the
12 assistance of the interpreter, are you able to understand me so
13 far?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: If you have any difficulty understanding
16 me, let me know. Will you do that, please?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Mr. Talkin, I understand your
19 client wishes to plead guilty to each of the three counts in
20 the superceding indictment pursuant to an agreement, is that
21 correct?

22 MR. TALKIN: Correct, that's S3.

23 THE COURT: All right. Mr. Vargas, if you're going
24 to plead guilty to crimes today, there are some questions I
25 must ask you and your answers must be truthful, so I'm going to

1 ask you to stand for a moment to be sworn in.

2 THE CLERK: Raise your right hand.

3 (AT THIS TIME THE DEFENDANT, PABLO VARGAS, WAS SWORN.)

4 THE CLERK: You may be seated.

5 THE COURT: Mr. Vargas, now that you have sworn to
6 tell the truth, you must tell the truth. If you were
7 deliberately to lie in response to any of my questions, you can
8 face additional charges for perjury. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: So it's very important that you
11 understand my questions. If you need me to repeat or explain
12 anything, just let me know. Will you do that, please?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And if you need time to consult with your
15 attorney, let me know that, I'll give you as much time as you
16 like. Will you do that, please?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, I've got a couple of documents that
19 appear to have your signature. There is a one-page consent
20 form and a multiple page agreement. Just look at those and let
21 me know if you signed those documents.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Before signing them, did you
24 read and understand each of them, or have each of them
25 explained to you and understand them?

1 THE DEFENDANT: Yes, sir. My lawyer explained them
2 to me.

3 THE COURT: All right. And Mr. Riley, has the
4 Government notified any victims of today's proceeding?

5 MR. RILEY: Yes, Your Honor.

6 THE COURT: And have any expressed a desire to be
7 heard today?

8 MR. RILEY: No, Your Honor.

9 THE COURT: All right. And I know that there appears
10 to be no one in the gallery.

11 All right. Mr. Vargas, I want to be sure that you're
12 competent to proceed today. Tell me, please, how old are you?

13 THE DEFENDANT: I'm 40 years old, soon to be 41.

14 THE COURT: How far did you go in school?

15 THE DEFENDANT: I reached the first grade of high
16 school.

17 THE COURT: Are you now or have you recently been
18 under the care of a doctor or a psychiatrist for any reason?

19 THE DEFENDANT: No, sir.

20 THE COURT: In the last 24 hours have you had any
21 pill, or drug, or medicine, or alcohol?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have you ever been hospitalized or
24 treated in any way for substance abuse or addiction problem?

25 THE DEFENDANT: No, sir.

1 THE COURT: Is your mind clear right now?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you had any difficulty understanding
4 my questions to you?

5 THE DEFENDANT: No, sir.

6 THE COURT: Mr. Talkin, have you discussed the matter
7 of a guilty plea with your client?

8 MR. TALKIN: Yes, I have.

9 THE COURT: In your view does he understand the
10 rights that he would waive by pleading guilty?

11 MR. TALKIN: Yes.

12 THE COURT: Do you have any reason to question your
13 client's competence to proceed today?

14 MR. TALKIN: No, I do not.

15 THE COURT: All right. Now, Mr. Vargas, let's
16 discuss first this one-page consent form that you signed. I'm
17 what's known as a Magistrate Judge. Your case is assigned to a
18 higher ranking judge named Judge Cogan. The most important
19 difference between us for today's purpose is that if you're
20 convicted of any crimes in this case, it is Judge Cogan who
21 will decide what your sentence should be, not me. For that
22 reason you might prefer to have Judge Cogan listen to your plea
23 in person. And if you want to proceed that way, no harm will
24 come to you. We'll simply find a time when Judge Cogan is
25 available. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: If you understand that you have that
3 right and you're willing to waive that right, I will listen to
4 your plea today. We're making a recording of everything that's
5 being said here, and Judge Cogan will read a transcript of the
6 proceeding before he decides whether to accept your plea and
7 before he decides what your sentence should be. Do you
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you consent to have me conduct today's
11 proceeding?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And is that what you intended by signing
14 this consent form?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. I want to make sure you
17 understand what the Government would have to prove to convict
18 you of the crimes in the indictment. I'll take them one at a
19 time. The first crime is described as Hobbs Act robbery
20 conspiracy. To convict you of this offense, the Government
21 would have to prove beyond a reasonable doubt first that you
22 entered into an agreement with at least one other person.
23 They'd have to prove that the object or the purpose of that
24 agreement was to obstruct or delay or to affect commerce or to
25 delay or affect or obstruct the movement of articles or

1 commodities in commerce, and that the purpose was to do so by
2 robbing persons, in this case drug traffickers in New York,
3 North Carolina, Georgia and elsewhere. They'd have to prove
4 that you entered into this agreement where you or somebody else
5 did something to make it succeed within the Eastern District of
6 New York, which is a geographic area that includes Brooklyn,
7 Queens, Staten Island, and Long Island. And they'd have to
8 prove that you entered into this agreement, or that you or
9 somebody else did something to make it succeed during the time
10 period charged in the indictment of January 1, 2007 through
11 July 8, 2010. They wouldn't have to prove that you were
12 involved that whole time, just that during that period you were
13 involved in a conspiracy. Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Mr. Riley, have I omitted or
16 misstated any of the essential elements of the offense?

17 MR. RILEY: No, Your Honor.

18 THE COURT: All right. Let's move on to Count 2
19 which is described as conspiracy to distribute narcotics. To
20 prove you guilty of this offense, the Government would have to
21 prove once again that you entered into an agreement with at
22 least one other person. They'd have to prove that the purpose
23 or the object of this agreement was to distribute or to possess
24 with the intention of distributing a controlled substance.
25 They'd have to prove that the controlled substance to be

1 distributed as part of this agreement involved at least five
2 kilograms of cocaine. They'd have to prove the same time and
3 place elements as the other offense, that you entered into the
4 conspiracy or somebody did something to make it succeed within
5 the Eastern District of New York and during the time period
6 mentioned in the indictment, January 1, 2007 through July 8,
7 2010. They'd have to prove that you entered this agreement
8 knowingly and intentionally, and not as a result of some sort
9 of accident or mistake. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And I should mention going back to the
12 first count, the robbery conspiracy, that agreement also the
13 Government would have to prove that you entered into it
14 knowingly and intentionally and not as a result of some sort of
15 accident or mistake. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: And Mr. Riley, have I omitted or
18 misstated any essential elements of Count 2?

19 MR. RILEY: No, Your Honor.

20 THE DEFENDANT: No, sir.

21 THE COURT: No, I was asking Mr. Riley. That's okay.
22 Now, on the third count which is described as the unlawful use
23 of firearms, the Government would have to prove that with the
24 same time and place requirements that I described in the other
25 counts, that you either by yourself or acting together with

1 others intentionally used and carried at least one firearm in
2 connection and in relation to one of the crimes charged in
3 Count 1 and Count 2, and that you possessed that firearm, or at
4 least one firearm knowingly and intentionally, not as a result
5 of an accident or mistake, and that you did so to further the
6 crime charged in Count 1 or the crime charged in Count 2. And
7 they'd have to prove that while carrying or using that firearm,
8 that firearm was brandished and discharged, fired. Understand
9 all of that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And Mr. Riley, have I omitted or
12 misstated any of the essential elements of that offense?

13 MR. RILEY: No, Your Honor.

14 THE COURT: All right. Mr. Vargas, do you feel that
15 you understand what the Government would have to prove to
16 convict you of the three crimes charged against you in the
17 superceding indictment?

18 THE DEFENDANT: I understand, yes, sir.

19 THE COURT: You have a right to plead not guilty and
20 make the Government prove all of those things. Do you
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: If you plead not guilty, under our
24 constitution you'll be entitled to a speedy and public trial by
25 a jury with the assistance of an attorney on those charges. Do

1 you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Talkin, are you appointed or
4 retained?

5 MR. TALKIN: I am appointed.

6 THE COURT: All right. So because you cannot afford
7 private counsel, the Court has appointed Mr. Talkin to
8 represent you. And if you wish to have a trial, Mr. Talkin
9 will represent you at every stage of these proceedings, at a
10 trial, preparing for a trial and at a trial if you wanted to
11 have a trial, at sentencing if you were found guilty, and on
12 appeal if you wish to challenge your conviction, all of it at
13 no expense to you. And if Mr. Talkin becomes unavailable for
14 any reason, another lawyer will be appointed at no cost to you
15 to replace him. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: At a trial, you would be presumed
18 innocent and the Government would have to overcome that
19 presumption and prove your guilt beyond a reasonable doubt.
20 You would not have to prove your innocence. If the Government
21 failed to prove your guilt beyond a reasonable doubt, the jury
22 would have a duty to find you not guilty. Do you understand
23 that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Also at the trial, the Government would

1 have to bring its witnesses to court so that they could testify
2 in your presence. Your attorney would have the right to cross
3 examine those witnesses. He could object to any evidence that
4 the Government tried to offer against you. He could offer
5 evidence in your behalf if he thought that there was evidence
6 that might assist you, and he could compel witnesses who you
7 wish to call to appear at the trial. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Excuse me for a moment.

10 [Pause in proceedings.]

11 THE COURT: At the trial, you also would have the
12 right to testify in your own behalf if you wish to do so but
13 you could not be forced to be a witness at your trial and
14 that's because under our constitution, no one could be forced
15 to be a witness against himself. So if you decided to go to
16 trial and decided not to testify, the judge would tell the
17 jurors that they must not hold that against you. Do you
18 understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, if you plead guilty and if based on
21 my recommendation the judge accepts that plea, you'll be giving
22 up your right to a trial and the other rights that we've
23 discussed. There won't be a trial. You will simply be found
24 guilty on the basis of your plea and you won't ever be able to
25 challenge that finding of guilt, not on appeal in this case,

1 and not in some later legal proceeding. Do you understand
2 that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You should also understand that if you
5 decide to plead guilty I'm going to ask you some questions
6 about what you did that makes you think you committed these
7 offenses. If you decide to answer my questions, you'll be
8 giving up your right not to be a witness against yourself. Do
9 you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Are you willing to give up your right to
12 a trial and the other rights that we've discussed.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Now let's talk about this
15 second document you signed, the agreement that's been marked as
16 Court Exhibit 1.

17 (AT THIS TIME COURT EXHIBIT 1 MARKED)

18 THE COURT: I have the original here with me that you
19 signed. Do you have a copy with you at the table?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. If you need to look at the
22 original at any point, just let me know and I'll bring it to
23 you. Will you do that, please?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: This document that you signed, Court

1 Exhibit 1, is this your agreement with the Government?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: I'm not going to go through it page by
4 page or paragraph by paragraph because I don't want to give you
5 the wrong idea that there's any one part of it that's more
6 important or less important than any other part. As far as I
7 can tell by looking at the document, it's the whole thing that
8 is your agreement with the Government. Is that your
9 understanding as well?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you think the Government has made any
12 promise that you're relying on that is not written down in this
13 agreement?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. Then let's talk about what
16 could happen at sentencing. Now, there are three different
17 crimes and each of them has its own sentencing possibilities.
18 I'll tell you about each one individually, but before I do that
19 I want to make sure you understand two things.

20 First of all, the sentence could be stacked up on all
21 three. So you might not begin to start serving your sentence
22 on the second count until you finish the first, and then you
23 might not begin to start the third count until you finish the
24 second. Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: The other thing you must understand is
2 that the sentence on the third count must be consecutive to the
3 other two. So even if the first two run concurrently, even if
4 you serve both of the sentences on Counts 1 and 2 at the same
5 time, you must complete the sentence on those two counts before
6 you can start serving a sentence on the third count. Do you
7 understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. With that understanding,
10 let's talk first about Count 1. If you're convicted of that
11 crime, the judge can sentence you to spend up to 20 years in
12 prison. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: There's no minimum prison term for Count
15 1, but if you are sent to prison, you could also be sentenced
16 to a term of supervised release of up to three years. What
17 that means is upon your release from prison you would be
18 supervised and you would have to obey certain conditions. And
19 if during that period of supervision of up to three years you
20 were to violate any of the conditions of your release, you
21 could be sentenced to spend up to two more years in prison
22 without credit for the time that you had previously been in
23 prison and without credit for the time that you had previously
24 been supervised. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: In addition to prison and supervised
2 release the Court could sentence you to pay a monetary fine.
3 Now the fine could be as high as \$250,000.00. It could be
4 higher than that. And to figure out the maximum amount of the
5 fine the Court will have to calculate two numbers. One number
6 will be the amount of gain that you and others involved
7 obtained from committing the crime, and double that amount.
8 And the other number is the amount of loss suffered by victims
9 of the offense, and the Court would double that amount. And
10 whichever of those numbers is highest, \$250,000.00, double the
11 gain, or double the loss, that is the maximum amount of the
12 monetary fine. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, some people might think that if they
15 don't know exactly what could happen to them at sentencing they
16 wouldn't want to plead guilty to a crime and today I cannot
17 tell you what the maximum fine might be on this offense. So if
18 that's something that you need to know before pleading guilty,
19 do not plead guilty today. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you wish to proceed even though I
22 can't tell you what the maximum fine would be?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: In addition to prison, supervised
25 release, and the fine, the Court could also sentence you to pay

1 restitution which means paying to victims of the offense the
2 amount that they lost. Here again, I can't tell you how much
3 that might be because I don't know how much the victims lost.
4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: In addition to everything else I've
7 already mentioned, the Court must require you, as part of the
8 sentence, to pay what's called a special assessment in the
9 amount of \$100.00. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: On top of everything else we've already
12 discussed, you should assume that the Court will order you to
13 forfeit certain property as described in your plea agreement.
14 And folks, I notice that the plea agreement makes reference to
15 an exhibit which purports to be attached to the original plea
16 agreement, but it's not, and refers to a, and I'm quoting now,
17 "The financial statement dated question mark." Is that
18 something that you wish to amend?

19 MR. RILEY: Yes, Your Honor, I apologize. Can I have
20 one moment to speak with Mr. Talkin, Your Honor?

21 THE COURT: Yes, please.

22 [Pause in proceedings.]

23 MR. TALKIN: You can have this marked. This is the
24 financial affidavit and it's dated --

25 THE COURT: Well, why don't you correct the original,

1 physically attach the statement, and have Mr. Vargas and the
2 attorneys sign or initial the change.

3 [Pause in proceedings.]

4 THE COURT: All right. Mr. Vargas, the documents
5 that I was talking about, Court Exhibit 1, the agreement has
6 now been changed. I think today's date has been put in
7 Paragraph 10 referring to a financial statement and the
8 statement itself has been attached and the change appears to
9 bear your signature and the signatures of the lawyers. Can you
10 just initial this document to reflect the change?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. And this financial statement,
13 is it something you reviewed and understood?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Mr. Riley, is there a specific
16 aspect of the forfeiture that you should call to my attention?

17 MR. RILEY: No, Your Honor.

18 THE COURT: All right. So where we left off before
19 when we were talking about the penalties for the first count, I
20 had already told you about prison, and supervised release, and
21 the fine, and the special assessment. We were talking about
22 forfeiture and this financial statement will help the Court
23 determine what property, if any, is the product of your
24 engaging in this crime that should be forfeited. Do you
25 understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Finally, in addition to
3 everything else I've already told you about, you should assume
4 that if you're convicted of this crime, at some point in the
5 future, possibly after you have served time in prison, you will
6 be removed from the United States. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you feel you understand everything
9 that could happen as a result of the sentence on Count 1?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Now, I'm going to turn to the
12 possible sentence on Count 2. Keep in mind, you might not
13 begin to start serving the sentence until you completed the
14 sentence on Count 1.

15 If you're convicted of the crime charged in Count 2,
16 that's the drug conspiracy count, the Court can sentence you to
17 spend the rest of your life in prison. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: The Court, under normal circumstances,
20 must sentence you to spend at least ten years in prison on that
21 count. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: In addition to prison, the Court must
24 also impose a term of supervised release of at least five years
25 and possibly as long as the rest of your life. And on this

1 count, if you violate the conditions of your release, you can
2 be sent back to prison for up to five years without credit for
3 the time previously served in prison and without credit for the
4 time previously supervised. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: In addition to prison and supervised
7 release, the Court could sentence you to pay a fine of up to
8 \$10 million on this count. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: In addition, the Court must require you
11 to pay what's called special assessment in the amount of
12 \$100.00 and that must be in addition to the \$100.00 on Count 1.
13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Once again, with this crime as well as
16 Count 1, you should assume that the Court will sentence you to
17 forfeit property based on what's in your financial statement,
18 and that at some point in the future you will be removed from
19 the United States. Do you understand both of those things?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you feel that you understand the
22 sentence that can be imposed if you're convicted on Count 2?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, let's turn to the third count, the
25 firearms count. If you're convicted of that crime, the Court

1 could sentence you to spend up to the rest of your life in
2 prison. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Under normal circumstances the Court must
5 sentence you to spend at least ten years in prison. Do you
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I'll just remind you and make sure you
9 understand, this count, the prison sentence cannot begin until
10 you have completed the sentence imposed on Counts 1 and 2. Do
11 you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: With this count as well, the Court must
14 impose a term of supervised release of at least five years and
15 possibly as long as the rest of your life. If you violate a
16 condition of release, you could be sentenced to up to five more
17 years in prison without credit for time previously served in
18 prison and without credit for the time previously supervised.
19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: In addition to prison and supervised
22 release on Count 3, the Court can sentence you to pay a fine of
23 up to \$250,000.00. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: In addition, the Court must sentence you

1 to pay another special assessment in the amount of \$100.00 and
2 that will be in addition to the \$100.00 amounts separately
3 imposed on Counts 1 and 2. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And finally, as with the other two
6 crimes, you should assume that at some point in the future if
7 you're convicted of this crime, you will be removed from the
8 United States. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you feel you understand what can
11 happen at sentencing as a result of a conviction on Count 3?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Riley, there are a lot of components
14 to these sentences. Have I omitted or misstated any of the
15 sentencing possibilities for any of the three crimes?

16 MR. RILEY: No, Your Honor.

17 THE COURT: Mr. Vargas, let's talk about how the
18 Court will go about choosing a sentence. The first thing we
19 should discuss about that is the Federal Sentencing Guidelines.
20 Have you discussed those with your attorney?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I want to make sure you understand that
23 you may have seen a calculation or an estimate of what the
24 guidelines will be in this case from the prosecutors or from
25 your attorney or from someone else. I'm sure that anyone who

1 tried to give you that information was trying to be accurate.
2 But you must understand that any calculation or estimate of a
3 sentencing guideline range that you've seen so far may be
4 incorrect. That's because the only calculation that will count
5 in this case is the one that Judge Cogan will do at the time of
6 your sentencing. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: The way these guidelines work is they
9 help the judge consider a sentence by coming up with two
10 scores. One score measures the seriousness of the offense. So
11 in a case like this, the amount of drugs involved, loss
12 suffered by victims, your use of a gun, whether somebody was
13 hurt, all of these things could affect your score. Do you
14 understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: The second score is based on your own
17 personal history. If you've previously been convicted of an
18 offense, that would affect the second score. Do you understand
19 that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: With these two scores, the judge can find
22 a box in a grid and written down inside that box is a range of
23 months. It might be in a case like this a range that has a
24 number of months at the beginning and life in prison at the
25 top. And that is the recommended sentencing guideline range

1 for the case. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, the Court must consider imposing a
4 sentence within the recommended range, but the Court doesn't
5 have to impose a sentence within that range. The judge could
6 decide to give you a sentence that is more severe or more
7 lenient. And in deciding what the sentence should be, the
8 Court must consider a number of factors including your
9 circumstances and the circumstances of the offense, the need to
10 impose a just punishment, the need to deter you and others from
11 committing crimes in the future, your need for effective
12 correctional treatment, and other circumstances as well. And
13 the Court has to take into account all of those circumstances
14 and impose a sentence that it believes to be fair for all of
15 the circumstances. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: To help the judge do that the Probation
18 Department is going to write a report and as they prepare that
19 report, they'll interview you and you can have your attorney
20 present for that interview. The Probation Department will
21 probably talk to the Government and they may interview others
22 as well. And they'll prepare a report that has information
23 about your background and about what happened in this case and
24 about the law that applies, and it'll have a calculation of the
25 sentencing guidelines. You'll get a chance to read that report

1 and review it with your attorney. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You may not like what you see in the
4 report. You may think it's inaccurate or unfair in some way.
5 You may think that the guidelines calculation is wrong. None
6 of that will be a reason to take back your guilty plea. Do you
7 understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: What you can do if you think there's a
10 problem with the report is object to it, and your attorney will
11 help you do that. The judge will consider your objections and
12 he will rule on them. Then he will listen to what you and your
13 attorney and the prosecutors and possibly others have to say
14 about what the sentence should be, and he will calculate the
15 sentencing guidelines and then he'll impose a sentence on you.
16 And at any step along the way of the process I just described
17 you may think that the judge makes a mistake or acts unfairly,
18 or you may think he gets the guidelines wrong. Again, none of
19 that will be a reason to take back your guilty plea. Do you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If you think the judge makes a mistake of
23 some sort or acts unlawfully in any way at your sentence, you
24 can appeal the sentence but you won't be able to appeal the
25 determination of your guilt. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Do you have any questions
3 that you'd like to ask me about the charges in this case, about
4 your rights, about the sentencing possibilities, or anything
5 else in this matter?

6 THE DEFENDANT: No, sir. Everything's fine.

7 THE COURT: All right. I'm going to ask you that one
8 more time and the reason I do that is that people do sometimes
9 change their mind about pleading guilty and I want to be sure
10 you understand that if you come back later and ask to take back
11 your guilty plea, the prosecutor will probably argue that you
12 should not be allowed to do so because you said today that you
13 understood everything, you knew what you were doing and he'll
14 probably win that argument. So if there's anything you need to
15 ask me about, or think about, or talk about with your lawyer,
16 now is the time to do it because later it may be too late. Do
17 you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Is there anything you'd like to ask me?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you need more time to think about your
22 decision or to discuss it with your attorney?

23 THE DEFENDANT: No, sir.

24 THE COURT: Mr. Talkin, is there any legal reason why
25 your client should not plead guilty today?

1 MR. TALKIN: No, Your Honor.

2 THE COURT: Mr. Vargas, are you satisfied with the
3 legal representation you have received up until now?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Then tell me, please, how do you plead to
6 the charge contained in Count 1 of the superceding indictment
7 accusing you of Hobbs Act robbery conspiracy; guilty or not
8 guilty?

9 THE DEFENDANT: Guilty.

10 THE COURT: How do you plead to the charge set forth
11 in Count 2 of the superceding indictment accusing you of
12 conspiracy to distribute narcotics; guilty or not guilty?

13 THE DEFENDANT: Guilty.

14 THE COURT: How do you plead to the charge set forth
15 in count 3 of the superceding indictment accusing you of
16 unlawful use of firearms; guilty or not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: Are you making these pleas of guilty
19 voluntarily and of your own free will?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Has anyone threatened or forced you to
22 plead guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: Other than the promises that are written
25 down in your agreement with the Government, Court Exhibit 1,

1 has anyone made any promise that is causing you to plead
2 guilty?

3 THE DEFENDANT: No, sir.

4 THE COURT: Has anyone made any promise about what
5 your sentence will be?

6 THE DEFENDANT: No, sir.

7 THE COURT: Then tell me, please, in your own words
8 what you did that makes you think you've committed these
9 crimes.

10 THE DEFENDANT: Well, I know I'm guilty because
11 together with others we together affected interstate commerce
12 while committing this robbery to other drug traffickers. This
13 happened between 2007 and 2010. During one of the robberies,
14 one of my coconspirators discharged a firearm. The robberies
15 occurred in North Carolina, New York, and Georgia. I together
16 with others went and executed a robbery that took place in
17 North Carolina in November of 2008. The planning of this
18 robbery in which I took part occurred in Brooklyn, New York.
19 During these robberies I, along with others, took cocaine from
20 drug dealers that we intended to sell. The amount of cocaine
21 was in excess of five kilograms. I knew what I was doing was
22 wrong and illegal. That's why I admit I am guilty.

23 THE COURT: Mr. Riley, is there anything further that
24 you'd like to elicit or that you'd like to proffer?

25 MR. RILEY: Not with respect to the allocution, Your

1 Honor.

2 THE COURT: All right. Do you agree that the
3 allocution is sufficient to establish the essential elements of
4 each of the three crimes in the superceding indictment?

5 MR. RILEY: Yes, Your Honor.

6 THE COURT: Is there anything further you think I
7 should discuss with Mr. Vargas for purposes of Rule 11?

8 MR. RILEY: No, Your Honor. There is one issue or
9 one portion of the plea agreement that I just wanted to draw to
10 the Court's attention.

11 THE COURT: The stipulation?

12 MR. RILEY: I'm sorry?

13 THE COURT: Is it the stipulation?

14 MR. RILEY: Yes, Your Honor.

15 THE COURT: Okay. Well, the stipulation as to facts,
16 I see it's in there, but I wanted to make sure there was an
17 allocution --

18 MR. RILEY: Yes. Fair enough, Judge.

19 THE COURT: -- that stands on its own.

20 MR. RILEY: Yes.

21 THE COURT: All right. Mr. Talkin, is there anything
22 further that you wish to have me discuss with your client under
23 Rule 11?

24 MR. TALKIN: No, Your Honor.

25 THE COURT: Based on what I've heard today, I find

1 that Mr. Vargas is competent to proceed. I find that he's
2 acting voluntarily, that he fully understands his rights and
3 the potential consequences of his plea and that there's a
4 factual basis for his plea of guilty. I therefore respectfully
5 recommend that the Court accept Mr. Vargas' plea of guilty to
6 each of the three charges in the superceding indictment.

7 I'll ask all of you to appear before Judge Cogan on
8 July 30th at 10 in the morning for sentencing. And I'm going to
9 return to the Government for safekeeping the original
10 agreement.

11 Is there anything further for today?

12 MR. TALKIN: Can I just speak with the Government for
13 a second?

14 THE COURT: Sure.

15 [Pause in proceedings.]

16 MR. TALKIN: No, there's nothing further at this
17 time.

18 THE COURT: Anything further for the Government?

19 MR. RILEY: No, Your Honor.

20 THE COURT: All right. Thank you all. Have a very
21 good day.

22 MR. TALKIN: Thank you, Your Honor.

23 MR. RILEY: Have a good weekend.

24 * * * * *

25

1 I certify that the foregoing is a court transcript from an
2 electronic sound recording of the proceedings in the above-
3 entitled matter.

4 

5 _____
6 Mary Greco

7 Dated: May 30, 2013
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